

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5565 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

GOVIND BHIMA PADAVDARA

Appearance:

MR HARDIK C RAWAL for Petitioner

MR ANIL C THAKORE for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 01/08/2000

ORAL JUDGEMENT

Respondent Govind Bhima Padavdara was working as conductor under GSRTC. While in service, on 29-4-1996 a surprise check was conducted by the Corporation officials in the route where respondent was on duty as conductor.

In the surprise check, it was found that, the respondent conductor has collected bus fare from the passengers but he has not issued tickets to them and thus he has misappropriated the public money. Accordingly, departmental proceeding was initiated against the respondent and during inquiry charges were proved before Inquiry Officer. The disciplinary authority after considering the report and after considering papers and documents, dismissed the respondent from service by an order dated 25-6-1996. Having felt aggrieved by the order of the authority, respondent moved the government for referring the dispute to the Labour Court. Accordingly the government has referred the dispute of the respondent to the Labour Court, Surat, and the Labour Court registered the case being Reference (LCS) No: 57/98. Labour Court after taking evidence and after hearing the parties, set aside the order of dismissal and directed the Corporation to reinstate the respondent in service. The Labour Court however imposed penalty of withholding of three increments, and in addition the respondent was not allowed back wages by the Labour Court. Having felt aggrieved by the order of the Labour Court dated 19-4-1999 passed in Reference No. LCS 57/98, Corporation filed present writ petition for quashing judgment and award passed by the Labour Court.

2. Mr. H.C. Rawal, learned counsel appearing on behalf of the GSRTC submitted that, apart from the present incidence of misappropriation of public money, the respondent was on earlier occasions cautioned and warned by the department for various misconducts. It is submitted by Mr. Rawal that, during his short period of service the respondent was cautioned and warned 41 times for various misconducts, including misappropriation of public money. Learned counsel accordingly submitted that, since the respondent did not rectify himself in spite of several caution and warnings, he is unfit to be retained in service. Learned counsel Mr. Rawal further submitted that the default chart of the respondent was produced before the Labour Court, and the Labour Court in the judgment & award has mentioned about 41 past misconducts of the respondent, but still then, the Labour Court failed to consider past conduct of the respondent, and to take appropriate measure for misconduct of the respondent. It is also submitted that, if the misconduct of the respondent is viewed lightly, then he will indulge in misappropriation of public money and therefore such person cannot be retained in service. Mr. Rawal accordingly submitted that the Labour Court has failed to appreciate the oral and documentary evidence adduced by the Corporation and also did not take in to consideration

past conduct of the respondent while setting aside the order of dismissal passed by the Corporation. Accordingly it is submitted that the Labour Court has acted in a manner which is not vested in it under law and the judgment & award of the Labour Court suffers from serious error. Mr. Rawal accordingly submitted that the judgment & award of the Labour Court is required to be quashed.

3. I have also heard learned counsel for respondent Mr. Thakore. Learned counsel for the respondent submitted that on earlier occasion the petitioner was cautioned by the department but there was no proof that he was indulged in misappropriation of public money. Learned counsel further submitted that, in the present case also the misappropriation of public money has not been proved during inquiry and therefore, the Labour Court has correctly taken a lenient view. It is further submitted that after going through the evidences on record the Labour Court has taken a decision that the penalty imposed by the authority is disproportionate to the offence alleged to have been committed by the respondent, and therefore such a finding arrived at by the Labour Court should not be interfered with by this Court under writ jurisdiction.

4. I have considered submission of learned counsel of both the parties. It is an admitted fact that the respondent was on 41 earlier occasions cautioned and warned by the Corporation for various misconducts. It further appears that the Labour Court even though found about past misconducts of the respondent, did not take appropriate decision in the matter of penalty imposed by the Corporation. It further appears that, in spite of several misconducts on the part of the respondent, Labour Court has taken a lenient view in the matter of penalty. When the respondent has not rectified himself in spite of 41 cautioning and warnings, I am of the view that the penalty imposed on the respondent should not have been viewed lightly by the Labour Court. Having regard to the submission of learned counsel of both the parties, and after considering past conduct of the respondent, I am of the view that the respondent deserves more stringent punishment than what has been awarded by the Labour Court. It appears that the Labour Court has passed an order for withholding of three yearly increments, but having regard to the gravity of the offence and considering the past several misconducts of the respondent, I am of the view that, while reinstating the petitioner in his post, his pay should be fixed at the initial pay of the scale and thereafter, five yearly

increments should be withheld with cumulative effect from the date of reinstatement. With the aforesaid modification in the judgment & award of the Labour Court, present petition is allowed in part. Rule made absolute to the aforesaid extent. I, make no order as to costs. The petitioner Corporation is directed to reinstate the respondent in service within four weeks from the date of receipt of writ of present order.

DT: 1-8-2000

(P.K. Sarkar, J)

/vgn.